



SENATE BILL 1159/ASSEMBLY BILL 1751

FREQUENTLY ASKED QUESTIONS

Employer Responsibilities

- 1. Does the employer give every employee that they know has a positive test a DWC1 Claim Form?**
 - a. No, the employer provides a DWC1 Claim Form to any employee claiming benefits for workers' compensation, including those tied to a COVID-19 claim. If the employee believes they have or may have contracted COVID-19 due to their employment, they should notify the employer, and the employer should provide the DWC1 Claim Form to the employee and report the claim to Sedgwick Claims (SC).
- 2. Should I ask the employees I know have tested positive if they want to file a workers' compensation claim?**
 - a. No, there is no requirement for an employer to ask an employee if they want to file a claim.
- 3. Does the employee have to return the DWC1 Claim Form for a COVID-19 claim to be filed?**
 - a. No, there is no requirement for employees to return the DWC1 Claim Form. If employees have notified the employer that they are seeking benefits, the employer has five (5) days to report the claim to SC.
 - b. However, at this time, SB 1159 does appear to require the DWC1 Claim Form to be returned to qualify for the presumptive injury. This does not mean the employer should wait for the DWC1 Claim Form to be returned to them before reporting the claim to SC.
- 4. Do I still have to report a claim to SC if I have already reported the positive test on the SB 1159 Reporting Form?**
 - a. Yes, if an employee notifies the employer they are seeking workers' compensation benefits (regardless of presumptive injury), you will need to report the claim to SC within five (5) days.
- 5. Does the employee have to use their sick leave before receiving Temporary Disability benefits?**



- a. Yes, if an employee is eligible to receive sick leave specific to COVID-19, they are still required to exhaust this leave prior to receiving Temporary Disability benefits. It is important that the employer provide information to SC on any sick leave paid to the employee relating to COVID-19 to assure benefits are properly coordinated.
- 6. When calculating the worksite employee count, do I need to include jurors?**
 - a. Yes, courts are responsible for including jurors in their maximum counts if an employee tests positive.
 - b. The trial court worksite employee count does NOT include non-employees:
 - i. Judges or justices (they belong to the judiciary program), security staff (e.g. county sheriffs or bailiffs), members of the public, defendants that are being transported for appearances, vendors, and/or other employers in that worksite.
- 7. What if I cannot determine the highest number of employees and jurors onsite in the 45 days preceding the employee's last day of work?**
 - a. Use the most reasonable estimate you can determine at the time. If your court has employees onsite with alternating schedules, use the highest number of staff and jurors onsite at the time.
- 8. What do I do if a judge reports a positive test?**
 - a. Since judges and justices are judiciary employees, please notify Jade Vu and she will work with members to obtain the necessary information so she can report the information to SC.
- 9. We have a court reporter who tested positive. Before testing positive, this employee worked at multiple court locations. Will I need to report all the locations this employee worked at to SC?**
 - a. Yes. If an employee worked at multiple locations prior to testing positive, add each location to the form and submit to SC.
- 10. How do I determine the date of the positive test on the form?**
 - a. It is the date that the test occurred. You will need to ask the employee when the test was taken.
- 11. If employees tested positive between July 6 and September 17, 2020, can I go back to those employees and ask what date they tested positive?**



- a. Yes. This information is used to determine what worksites you need to disclose to SC. It is also a requirement of the legislation, and employers must attempt to obtain this information and provide a reasonable estimate of the date.

12. What happens if a specific worksite is ordered to be closed?

- a. If a worksite was ordered closed by a local public health department, the State Department of Public Health, or the Division of Occupational Safety and Health due to risk of infection with COVID-19, please provide SC the location, the highest number of daily employees, who ordered the closure, and the date of closure.

Definitions

13. Please explain “Rebuttable Presumption”.

- a. SB 1159 determines a claim for COVID-19 under specific circumstances is presumed to be a compensable injury/illness for workers’ compensation benefits unless the employer or SC can provide evidence that the positive test or diagnosis for COVID-19 was the result of some exposure other than that the employee may have encountered in the workplace.
- b. For the purposes of SB 1159, evidence of other exposure may include:
 - i. Employee’s lack of on-site attendance at work within 14-days preceding the positive test; or
 - ii. Diagnosis of COVID-19 with no corresponding positive test; or
 - iii. No known COVID-19 exposure (no outbreak, no direct community contact at work); or
 - iv. Known non-industrial COVID-19 exposure (family, community events, etc.).

14. Are all COVID-19 claims now considered Presumptive Injuries?

- a. No. SC will consider all COVID-19 claims for potential coverage regardless of the presumptions outlined in SB 1159. The presumption does not apply unless SC has determined there has been an outbreak applicable to the *employee claiming an industrial injury*.
- b. Claims that were previously denied with positive COVID-19 tests will be evaluated to determine if the denial is impacted by SB 1159.
- c. A claim may be considered compensable for COVID-19 and not be associated with an outbreak.



SC Responsibilities

15. Does the employer determine if there has been an outbreak as defined by SB 1159?

- a. No, SC will maintain the reported information to determine if any outbreak exists for claims reported. The employer is responsible for notifying SC of any known positive tests, either work-related or not.

16. What happens if SC determines if there is an outbreak at the worksite? Do they need to report it to any other agencies?

- a. There are no additional reporting responsibilities mandated by SB 1159. If an employee claims an industrial exposure, SC will evaluate whether there is an outbreak in effect that would trigger the presumption and will notify the involved member accordingly.

17. What happens if SC determines if there is no outbreak and a new claim is submitted? How is that claim treated?

- a. There is no difference from the standard procedure. The claim is administered like any other claim with no presumption in place. If the number of reports reaches outbreak levels, then the presumption applies.

18. If a claim has already been denied, does it have to be reopened and evaluated under SB 1159?

- a. Yes.

19. Does the employer have to maintain the positive test information supplied to SC for a specific period of time?

- a. At this time, there is no specific requirement for the length of time an employer must maintain COVID-19 reporting information. Employers should follow the court's protocols on record retention.

20. If the employer receives a request from an attorney or employee for a copy of the COVID-19 Outbreak reporting data, should this be supplied?

- a. Employers should coordinate with JBWCP staff to ensure no confidential information is inadvertently provided.